IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5165 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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G S R T C - Petitioner(s)

Versus

IBRAHIMBHAI AHMEDBHAI MALEK - Respondent(s)

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Appearance :

MR ASHISH M DAGLI for Petitioner(s) : 1,
MR TR MISHRA for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 20/09/2005

ORAL JUDGMENT

1. In this petition, the petitioner State Road Transport Corporation has challenged the legality of

an order dated 17/10/2001 passed by Conciliation Officer and Asst. Labour Commissioner, Ahmedabad.

2. The respondent workman was engaged as Driver. He was dismissed from service by an order dated 29th May, 2000 on the allegations that he misbehaved with the Checking squad and did not permit the proper inspection of the bus and that he had fought with the conductor in collecting fare without issuing tickets. The petitioner filed an Approval Application. On the approval application No.478/2000 filed by the petitioner impugned order dated 17/10/2001 came to be passed. In the order the said authority has observed that Reference IT No. 562/99 was pending in which Complaint IT No. 54/00 was filed by the workman in which the Tribunal had passed the order dated 25/4/2000 and directed the petitioner to maintain status quo and had also provided that if the petitioner wishes to relieve the workman proper procedure under Section 33 of the Industrial Disputes Act should be followed. This interim order was to operate till 16/6/2000. The order was served on the petitioner on 25/5/2000. Despite that, dismissal

order dated 29/5/2000 came to be passed and approval application also came to be filed simultaneously. The Asst. Labour Commissioner was of the opinion that in view of the factual back ground the employer was required to file application seeking permission and approval application was not competent. Eventually by the impugned order the approval application was rejected.

3. I do not find that the authority committed any legal error in fact situation of the present case especially when the interim protection granted in a pending proceedings was operative. It was, therefore, not open for the employer to go ahead with the action of the dismissal disregarding the order of the status quo passed by the competent Court. The order passed by the Asst. Labour Commissioner therefore, calls for no interference.

4. It is however stated by the learned advocate appearing for the parties that the workman had already crossed the age of superannuation. His reinstatement, therefore, is obviously not possible.

By disposing of the present petition, therefore, it is directed that the workman shall be treated to have continued in service for all purposes including retiral benefits til the date he reached the age of superannuation. With respect to the back wages however, considering the factual back ground in which the dismissal order came to be passed and considering the fact that the workman had not actually discharged his duties, for intervening period in facts of the present case, ends of justice will be met if the workman is entitled to receive 50% of the actual wages for the intervening period. With these directions the petition is disposed of. Rule is made absolute to the limited extent. Now that the litigation is over, it is excepted that the employer will release the post retiral benefits expeditiously.

(Akil Kureshi, J.)

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